STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TROY ANDREW BEILBY and THOMAS BEILBY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TROY BEILBY,

Respondent-Appellant,

and

TAMMY PEIL,

Respondent.

UNPUBLISHED
August 19, 2008

No. 283648
Antrim Circuit Court
Family Division
LC No. 06-003821-NA

Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent Troy Beilby appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm.

This appeal arises from respondent, the biological father of the two minor children. Tammy Peil was their mother[1]. Tammy Peil was married to William Peil when the children were born, so William Peil was the children's legal father. Tammy Peil used marijuana during her pregnancies with both children, causing a CPS case to be opened when one of the children was born with narcotics in his system. In May 2005, Tammy Peil placed the children under the limited guardianship of their maternal grandmother, despite the fact that she had a history of 24 CPS referrals relating to neglect or abuse of her own children and two other children under her

[1] The mother of the minors did not appeal the trial court's decision to terminate her parental rights in this case.

guardianship, the most recent in April 2004. Tammy Peil and respondent resided in the apartment above the maternal grandmother and the children, but that home burned down in October 2005.

In March 2006, police responded to a verbal argument at the home respondent and Tammy Peil shared and found it to be filthy, with the floor covered with trash, rotten food, and animal feces. Respondent reported that Tammy Peil smoked marijuana regularly and became mean when she was unable to buy it. The children returned to the maternal grandmother's home, but it, too, had animal feces on the floor and in the drawers where the children's clothing was kept and other safety hazards, causing the minors to be placed in foster care. The minors exhibited signs of past trauma including sexual abuse.

On appeal, respondent argues that even though the children had been previously abused and neglected by their guardians, the only allegations against respondent in the original petition were his residence in a dirty apartment and a verbal argument with Tammy Peil. Respondent completely rectified those conditions before the termination hearing by separating physically and emotionally from Tammy Peil. Respondent contends that he was fully employed, had a suitable home for the children, and had benefited from parenting classes. Thus, respondent contends, the trial court erred in terminating his parental rights, and its order should be reversed. For the reasons set forth in this opinion we disagree with the assertions of respondent.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id*. Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id*.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to the children's temporary wardship with regard to respondent were his one-time physical abuse of another son in 2000, domestic discord with the children's mother, and an environmentally unfit home. Angry arguments, the unfit home environment, and to a lesser extent respondent's prior severe physical discipline of his then 13-year-old son all constituted respondent's failure to provide proper care or custody for the minor children.

The evidence showed that the minor children resided much of the time with respondent and their mother from the time the first was born in 2002 to the time they were removed at the ages of one and three in March 2006, even though their mother was married to another man, and in disregard of a guardianship established in May 2005, placing the children with a guardian who had an extensive protective services history. Respondent chose to father the minor children even though he knew their mother was a regular marijuana user and married to someone else, which prevented him from being the children's legal father. Also, despite respondent's presence in the children's home in years during which he claimed to have performed the majority of child care and housekeeping, the older child was repeatedly sexually abused and the younger was severely

traumatized, and the home became filthy and environmentally unfit. The children were seriously harmed during the time respondent was a significant presence in their lives. The evidence also indicated respondent had difficulty controlling his temper, his parenting skills were poor, he was depressed, dependent, and resistant to change, he would not likely seek out services, and he had narcolepsy. In order to become a minimally fit parent it was essential that respondent improve his parenting skills, particularly in the areas of child development and parent-child roles, and take significant steps to address his emotional and physical condition.

During the 11 months between initial disposition and commencement of the termination hearing, respondent only partially addressed his anger by attending six of 26 anger management sessions. He also completed only seven to nine parenting classes, made no progress in one-to-one parenting sessions and was described as "unworkable," and never began counseling to address his depression and dependent personality or treated his narcolepsy. He blamed the children's mother for their previous neglect and the state of the home, for failing to enroll him in services during this proceeding, and for squandering most of an income tax refund. He blamed his employer for unjustly terminating his employment. He blamed both of those parties for contributing to his depression and narcolepsy. Instead of admitting his parenting deficits and making a wholehearted effort to improve, respondent blamed others for those deficits, as indicated by his primary argument on appeal that separating from the children's unfit mother rendered him fit to parent the children. The trial court was not in error when it rejected these arguments as evidence of respondent's fitness as a parent.

The trial court correctly noted that respondent was not without some strengths, and the trial court was required to decide whether to terminate the parental rights of a parent who had a home and employment, had no known substance abuse issues, and was of normal intelligence, but who had been unable to keep the children safe or properly care for them in the past and who had not made any progress toward improving his parenting skills or addressing his depression and dependency. However, the trial court correctly found that respondent's condition at the conclusion of the termination hearing in September 2007 was the same as it had been at the time of initial disposition in June 2006, with the exception of his separation from the children's mother. Mere separation from her, as poor a mother as respondent's family testified she had been, was not sufficient to suddenly render respondent a fit parent. The harm to the children had occurred when their mother was physically present but virtually absent as a parent and while respondent was the one purportedly caring for the children and the home. There was not evidence that respondent had progressed at all in his treatment to a point where the trial court had any basis to believe that respondent would now be a fit and responsible parent.

Given the evidence as a whole, and giving deference to the trial court's ability to judge the credibility of the witnesses who appeared before it, we cannot find that the trial court made a mistake in finding respondent had not rectified the improper care and custody that led to the children's wardship and was not reasonably expected to do so within a reasonable time. *In re Miller*, *supra* at 337. We concur with the trial court's finding that because respondent had made no progress, the children remained at risk of harm if placed in his care.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed respondent loved the children and asserted his paternity as soon as their mother's husband relinquished parental rights. However,

the evidence also showed respondent was not likely to become a fit parent within a reasonable time and that, perhaps partially due to their placement in foster care at such young ages, the children did not have a normal attachment to him. The oldest child was particularly impacted by sexual abuse and required special services and long-term therapy, and the evidence indicated respondent would not reliably obtain the special services the children required. The trial court did not err in going one step further than the statute required in finding that termination of respondent's parental rights was not only not contrary to the children's best interests, but in their best interests.

Affirmed.

/s/ Alton T. Davis
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello